LEE YANG HEE v. REG.

[A.Cr.J. (Rose C.J., Chua and Wee Chong Jin JJ.)
March 13, 1959]

[Singapore — Magistrate's Appeal No. 236 of 1956]

Gaming — Characters lottery — Whether a lottery within the meaning of the Common Gaming Houses Ordinance (Cap. 114).

Evidence — Telephone conversation — Laying wager by telephone — Whether "access" to lottery.

Criminal Law and Procedure — Police investigation — Bets endeavoured to be made by telephone caller not knowing police investigation was in progress — Whether made in course of statement to police officer in course of police investigation — Criminal Procedure Code (Cap. 234) s.121(1).

The accused in this case was charged with two other persons under section 4(c) of the Common Gaming Houses Ordinance in that he assisted in the carrying on of a public lottery, to wit, the characters lottery. The learned District Judge who tried the case found the accused guilty and on October 23, 1956 convicted him and sentenced him to a fine of $3,000 or in default to three months' imprisonment. The accused appealed. Before the appeal could be heard, a case stated by another District Judge, was heard by the High Court and in *R. v. Chew Thia Hiang & Ors.* (2) it was held that the characters lottery was not a public lottery within the meaning of the Common Gaming Houses Ordinance. The Crown therefore applied for this appeal to be heard before a Court of three Judges.

The facts and the effect of the expert evidence given in this case are set out in the grounds of decision of the learned District Judge given below. It appeared that at the time of the police raid on the premises in question the appellant was seated with two other men at a table equipped with three telephones. While the police were taking possession of the documents which were on the table, the telephone rang on three or four occasions and bets were placed by the callers. In each case a Mr. Lee was asked for.

Held: (1) a characters lottery must be regarded as a "method or device whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance or lot" and is therefore a lottery within the meaning of the Common Gaming Houses Ordinance;

(2) cases of this kind fall within a special class and the standard of proof necessary for a conviction is high and the accused is entitled to avail himself of every loophole in the prosecution's case; in this case the explanation given by the "master schedule" and its connected documents was sufficient to enable the learned District Judge to infer its nature and the absence of detailed explanation of the remaining documents was not fatal to the prosecution's case;

(3) laying wagers by telephone constitutes sufficient access for the purposes of the Common Gaming Houses Ordinance;

(4) having regard to the fact that the telephone calls were made to the office in which the appellant was seated with three telephones at his elbow and the documents on the table, the learned District Judge was fully entitled to come to the conclusion that bets were being placed with the appellant by telephone;

(5) since the telephone callers themselves were totally unaware that any police investigation was in progress, it would be entirely artificial to hold that the bets they were endeavouring to make were made as part of a statement to a police officer in the course of a police investigation; the telephone conversations in this case were not therefore improperly received in evidence.

Cases referred to:—

(1) *Lee Seow v. Public Prosecutor* (1958) M.L.J. 245.

(2) *R. v. Chew Thia Hiang & Ors.* (1958) M.L.J. 17.

(3) *Public Prosecutor v. Lau Ting Kai* (1955) M.L.J. 206.

(4) *Public Prosecutor v. Lee Ee Teong* (1953) M.L.J. 244.

(5) *Keang Yeow Hooi v. Public Prosecutor* (1954) M.L.J. 233.

Also cited in argument on the appeal were *R. v. Ng Hiong* (1948-49) M.L.J. Supp. 92; *Chai Fook v. Public Prosecutor* (1948-49) M.L.J. Supp. 26; *Public Prosecutor v. Woo Fong* (1955) M.L.J. 235; *Kok Ho Leng v. Public Prosecutor* (1941) M.L.J. 143; *R. v. Sageena* (1867) 7 Sutherland's W.R. 56; *Public Prosecutor v. Ramasamy* (1939) M.L.J. 163; *Vellasamy v. R.* (1941) M.L.J. 233; *Lim Seah Pong v. Public Prosecutor* (1957) M.L.J. 5; *Porter v. O'Connar* 5 N.Z.L.R. 257; *Lee Sun v. Conolly* 24 N.Z.L.R. 553; *R. v. Ang Tian Seng* (1958) M.L.J. 21; *Sim Ah Song v. R.* (1951) M.L.J. 150; *Taylor v. Smetten* (1883) 11 Q.B.D. 207; *Barclay v. Pearson* (1893) 2 Ch. 154; *Director of Public Prosecutions v. Phillips* (1935) 1 K.B. 391; *Bartlett v. Parker* (1912) 2 K.B. 497, 503; *R. v. Latip* (1935) M.L.J. 84; *Kader Batcha v. Public Prosecutor* (1935) M.L.J. 251; *Moore v. Elphick* (1945) 2 All E.R. 155; *Coles v. Odham Press* (1936) 1 K.B. 416; *Barker v. Munby* (1939) 1 All E.R. 611; *R. v. Shum Soo* (1949) M.L.J. 142; *Ang Chwee Keong v. R.* (1955) M.L.J. 36; *Abdul Kareem v. R.* (1957) M.L.J. 185; *Chin Sen Wah v. Public Prosecutor* (1958) M.L.J. 154.

The facts are set out in the grounds of decision of the learned District Judge:

Ahmad Ibrahim D.J.: In this case the appellant was charged with the offence of assisting in the carrying of a public lottery an offence under section 4(c) of the Common Gaming Houses Ordinance.

The facts were not substantially in dispute. On the 1st of August, 1956 Acting A.S.P. Ong Kim Boon and a party of police officers armed with a search warrant raided the front portion of the 2nd floor of No. 15 Upper Circular Road. He found in the room four persons, Lee Yang Hee (the appellant), Lee Yong Chick and Lee

Chiang Joo (who were also accused with the appellant) and one Yeo Kee Ngee (P.W.6). The Police Officers seized a number of papers and articles including Ex.P12, P13, P22 A1-A5, P25, P27, P28, P30, P31, P33, P34, P35, P23, P9, and P10 which were lying on the tables in front of the accused and the other two persons accused with him. The accused was the occupier of the 2nd floor of the premises. The Police Officers also saw four telephones on the tables. During the raid a number of telephone calls came through the telephones and one of the Police Officers Seah Kee Sing (P.W.5) said that the persons who rang staked on several numbers which he gave.

An expert on the characters lottery Mr. Gee Kok Weng (P.W. 7) was called to give evidence. He said he was shown the documents Ex.P12, P13, P22 A1-5, P25, P27, P28, P30, P31, P33, P34, P35, P23, P9. Mr. Gee Kok Weng said that he had a knowledge of the operation of the "characters" lottery in the Federation and in Singapore and he recognised the documents shown to him as documents used in the running of the lottery. He identified Exhibits P12, P13, P22 A1-A5, P25, P31, P33, P34 and P35 as staking slips of the characters lottery; he identified Exhibits P27, P28 and P30 as records of stakes in a characters lottery; Ex.P23 as accounts probably connected with collectors of this lottery and Ex.P9 as a master schedule — the final schedule kept by a promoter of the 10,000 number lottery.

P.W.7 explained the method of operation of the characters lottery. It appeared that persons who wished to participate in the game staked sums of money on what they considered would be the last two, three or four digits of the winning ticket in the sweepstake organised by the Penang Turf Club in connection with a particular horse race to be run at Penang. If the digits proved to be the correct one then the person making the stake would be paid $75-$80 where he staked on the last two digits (the 100 character lottery) $650 to $700 where he staked on the last three digits (the 1,000 character lottery) and $3,000 where he staked on the last four digits (the 10,000 character lottery). There can be no doubt that whether the staker won or lost depended on pure chance, i.e. on what was the number which drew the first prize in the Penang Turf Club sweepstake. If the evidence of P.W. 7 is accepted then clearly the documents related to the characters lottery, which is a lottery within the meaning of the Common Gaming Houses Ordinance. There has been some difference of opinion in the Courts of the Federation of Malaya as to whether the "characters lottery" is a lottery within the meaning of the Ordinance. Wilson J. in *Public Prosecutor v. Lau Ting Kai* [3] held that was no distribution or allotment of money and therefore the "characters" lottery was not a lottery within the meaning of the Ordinance. This case does not appear to have been followed by other Judges in the Federation and there is a Federation Court of Appeal decision *Keang Yeow Hooi v. Public Prosecutor* [5] which held that a similar type of lottery based on the M.C.A. lottery was a lottery within the meaning of the Ordinance. Counsel for the appellant in this case argued at the trial that P.W. 7 could not be an expert. Strictly speaking no doubt P.W. 7 is not an expert in the sense in which that expression is used in section 45 of the Evidence Ordinance but I held that his evidence was relevant under section 49 of the Ordinance, as Thomson J. held in *Public Prosecutor v. Lee Ee Teong.* [4] I had before me the documents Ex.P12, P13, P22 Al-5, P25, P27, P28, P30, P31, P33, P34, P35, P23, P9 and P10. I examined them and found them to contain certain figures and marks. P.W. 7 explained the meanings of the figures and numbers and related them to the characters lottery. I accepted his evidence and held that there was *prima facie* evidence to show the documents were tickets, accounts and records of stakes relating to a public lottery. I therefore called on the appellant and the other two accused for their defence.

The appellant in his evidence admitted that he was in possession of all the documents. He said the documents relate to codes about rubber business but he gave no explanation whatever of the figures and marks found on the documents and made no attempt to relate them to any code about the rubber business. I do not usually find anything striking about the demeanour of witnesses but in this case I noticed that, the appellant while giving his evidence was smiling and appeared to treat the matter as a joke. I had a strong impression that he himself did not believe what he said. In any case I held that the appellant had not rebutted the evidence of the prosecution and in particular the evidence of P.W. 7 that the documents related to the characters lottery.

I therefore found the appellant guilty and fined him $3,000 or 3 months' imprisonment. I acquitted accused 2 and 3 who were charged

with the appellant as I held that they had rebutted the evidence that they were in possession of the documents.

MAGISTRATE'S APPEAL before a Court of three Judges.

C. F. J. Ess for the appellant.

A. V. Winslow (Solicitor-General) for the respondent.

Cur. Adv. Vult.

The judgment of the Court was delivered by:

Rose C.J.: The appellant was convicted of assisting in the carrying on of a public lottery, to wit a characters lottery contrary to section 4(c) of the Common Gaming Houses Ordinance (Chapter 114). The appeal raises the important point as to whether the so-called characters lottery is a lottery within the meaning of the Ordinance. The definition of lottery reads as follows:—

"Lottery" includes any game, method or device whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance or lot, whether the same is held, drawn, exercised or managed within or without the Colony.

This matter has been the subject of conflicting judicial decisions until, as far as the Federation is concerned, the matter has been settled by the case of *Lee Seow v. Public Prosecutor* [1] which was heard by the Court of Appeal. In that case Thomson C.J. stated that having regard to the actual terms of the statutory definition, (which in all material respects is identical with that contained in our own Gaming Ordinance) a characters lottery must be held to fall within it. The nature of the so-called "characters" lottery is fully explained in the judgments of both Thomson C.J. and the learned District Judge in the present case, and it is unnecessary to set out an explanation here. In the course of his judgment Thomson C.J. referred to a judgment given in the Colony of Singapore by Tan Ah Tah J. in the case of *Regina v. Chew Thia Hiang & Ors.* [2]

In that case the learned Judge took the view that a lottery must entail a common element between the various participants and that this common element was lacking in the case of a characters lottery, for the reason that the prize to be won as a result of a successful wager is not affected by the number of other successful wagers that may have been laid on the same number and with the same promoter. It may well be that the view taken by Tan Ah Tah J. of what should be regarded as a lottery accords with common parlance and the popular conception of what a lottery should be. We find ourselves, however, in agreement with the view of Thomson C.J. that having regard to the statutory definition of lottery, a wider interpretation is demanded and that a characters lottery falls within this definition. A characters lottery must, in our view, be regarded as a "method or device whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance or lot."

The appellant also contends that upon the facts of the particular case his conviction was not justified. The prosecution relied in the main on the evidence of a witness who stated that he had some twenty-five years' experience of lotteries in the Federation, although only a brief experience in Singapore. The point was taken by counsel for the appellant that this witness failed to explain fully the meaning of the various documentary exhibits and that in the result the District Judge had relied excessively upon his own knowledge of the incidence of a characters lottery. It is true that the witness did not explain the greater number of the numerous documents produced but, as appears from page 11 of the record, he did explain by reference to connected documents the nature and purpose of an exhibit, (P9) which he described as a "master schedule."

Having given full weight to learned counsel's contention that in cases of this kind, which may be said to fall within a special class, the standard of proof necessary for a conviction is of the highest and that the accused is entitled to avail himself of the smallest loophole in the prosecution's case, we consider that the explanation given of the "master schedule" and its connected documents was sufficient to enable the learned District Judge to infer its nature, and that the absence of an explanation of the remaining documents is not fatal to the prosecution's case.

Moreover, even if there were some doubt as to this — which we do not concede — there was the additional element of certain telephone conversations which were overheard by the Police. It appeared that at the time of the Police raid on the premises in question the appellant was seated with two other men at a table equipped with three telephones. While the Police were investigating the documents which were found on the table the telephone rang on three or four occasions and bets were placed by unknown correspondents. In each case a Mr. Lee

was asked for. It may well be, as counsel for the appellant contends, that there are many persons in Singapore who are accustomed to be addressed as Mr. Lee and in fact there was one such person (not the appellant) in whose name the particular number was entered in the directory. Having regard, however, to the fact that these calls were made to this office in which the appellant was seated, with three telephones at his elbow and the documents to which we have already referred on the table, we consider that the learned District Judge was fully entitled to come to the conclusion that bets were being placed with the appellant by telephone.

Counsel contends that these telephone conversations were improperly received as evidence in the light of section 121 (1) of the Criminal Procedure Code, in that they were statements made to a Police Officer in the course of a Police investigation. We are unable to accede to this argument for the reason that the telephone callers themselves were totally unaware that any Police investigation was in progress, and it would therefore, in our view, be entirely artificial to hold that the bets that they were endeavouring to make were made in the course of a statement to a Police Officer in the course of a Police investigation.

Counsel for the appellant further contends that there was no evidence that the public had "access" to the lottery, within the meaning of section 2 of the Ordinance. We would observe that it would appear from the evidence to which we have referred that one method of laying wagers in this particular lottery was by telephone, three telephone receivers being in position on the table at which appellant was sitting at the time of the raid. This would in our opinion constitute sufficient access within the meaning of the Ordinance. Apart from that, there is no reason to suggest — and the evidence does not establish — that a member of the public wishing to lay a wager would have had any difficulty in effecting entry to the office in which the appellant was seated.

This is sufficient to determine the appeal. No argument was addressed to us on the question of sentence and we would merely observe that in the circumstances a fine of $3,000, with the alternative of three months' imprisonment, is not excessive.

The appeal must therefore be dismissed and the conviction and sentence affirmed.

Appeal dismissed.

Solicitors: *R. C. H. Lim & Co.*

In re Application by ONG ENG GUAN for an Order of Prohibition in re appointment of S. H. D. ELIAS

[O.C.J. (Rose C.J.) April 27, 1959]

[Singapore — Originating Motion No. 18 of 1959]

Constitutional Law — Prohibition — Application for Order — Whether Order lies to Inquiry Commission — Allegations of bias — Test to be applied — Inquiry Commissions Ordinance (Cap. 52).

This was an application for an Order of Prohibition to restrain a Commissioner appointed under the Inquiry Commissions Ordinance from acting on the ground that he was biased. The Attorney-General raised a preliminary objection that the writ of Prohibition did not lie against a Commissioner appointed under the Inquiry Commissions Ordinance, as the Commissioner had no power to determine questions affecting the rights of subjects and was therefore not a judicial tribunal. The Attorney-General also raised an objection to a passage in an affidavit filed in the proceedings on the ground that the passage was scandalous and irrelevant. The learned Chief Justice reserved his findings on these objections and the application was thereupon heard on its merits.

Held: (1) the Order of Prohibition does not lie against the Commissioner, as the Commissioner had no power to determine questions affecting the rights of subjects;

(2) the passage in the affidavit formed part of the history of the matters submitted for consideration and was therefore not irrelevant;

(3) the Court did not consider that there was a real likelihood of bias in this case, and even if the Order of Prohibition were to lie, the application could not be granted.

Per curiam: "It is to be noted that the deciding factor is not whether there is a reasonable suspicion of bias on the part of even a considerable number of responsible persons, but whether the Court itself — that is in the present case myself — considers that, irrespective of views that may genuinely and reasonably be held in other quarters, there is a real likelihood of bias." *R. v. Camborne Justices* (4) followed.

Cases referred to:—

(1) *R. v. Electricity Commissioners* (1924) 1 K.B. 171.

(2) *R. v. Manchester Legal Aid Committee* (1952) 1 All E.R. 481.

(3) *R. v. London County Council* (1931) 2 K.B. 233.

(4) *R. v. Camborne Justices* (1955) 1 K.B. 41.

(5) *R. v. Sunderland Justices* (1901) 2 K.B. 357.

The following cases were also referred to in argument: *R. v. Legislative Committee of the Church Assembly* (1928) 1 K.B. 411; *R. v. Metropolitan Police Commissioner* (1953) 2 All E.R. 717; *R. v. Statutory Visitors Caterham* (1953) 2 All E.R. 766; *Re Clifford &*